

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION No: 22280 of 2004

Between:

S. Krishnudu S/o Gangappa
Isurallapalli (V), Goory (M), Anantapur District

.... PETITIONER

AND

- 1 The Joint Collector, Anantapur, Anantapur District
- 2 The Revenue Divisional Officer, Anantapur, Anantapur District.
- 3 The Mandal Revenue Officer, Gooty Anantapur District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in nature of writ of Mandamus declaring the action of 1st respondent in not disposing of the appeal which is filed by before him against the orders of the 2nd respondent and the action of the 2nd respondent in not completing the enquiry initiated by him as illegal, arbitrary and consequently direct the 2nd respondent to complete the enquiry as expeditiously as possible and further direct the respondents to continue petitioner as FP Shop Dealer of Isurallapalli Village, Gooty (M) of Anantapur District, pending disposal of enquiry before the 2nd respondent.

Counsel for the Petitioner: MR.K.SITA RAM

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court made the following:

ORDER :-

The petitioner is a fair price shop dealer of Isurrallapalli village, Anantapur District. The second respondent, through show cause notice-cum-suspension order, dated 2.8.2004, suspended the authorization of the petitioner. Aggrieved thereby the petitioner filed an appeal together with an application for grant of stay before the first respondent. On 11.8.2004, the first respondent disposed of the appeal, but refused to interfere with the order of suspension. Hence this writ petition.

2. Heard learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

3. The authorization of the petitioner is suspended on the allegations such as not opening the FP shop as per the timings fixed by the authorities, giving rice of 8 Kgs only to a card holder instead of 16 kgs, not displaying the price list and not making entries in the cards about distribution. The appeal preferred by the petitioner was disposed of with the following observation.

“Upon perusing the grounds of appeal and also the orders of lower Court (i.e., Revenue Divisional Officer, Anantapur), it is felt that, “there is no need to interfere with the orders passed by the Revenue Divisional Officer, Anantapur. Hence, the case is hereby remanded to the Revenue Divisional Officer, Anantapur for disposal after giving opportunity for hearing”.

4. A perusal of the same discloses that except referring to the grounds and order passed by the R.D.O., the first respondent did not apply his mind to the various contentions raised by the petitioner. Further, he does not appear to have appreciated the circumstances under which the matter can be remanded by an appellate authority. This Court gains an impression that the first respondent did not pay proper attention either to the facts of the case or to the fundamental procedure.

5. Remand of a matter by an appellate authority would arise if only the order under

appeal is set aside. The very fact that the matter is remanded proceeds on the footing that the order appealed against, is set aside. Remanding the subject matter to the primary authority without interfering with the order under appeal is in fact contradiction in terms. The first respondent who is vested with appellate powers under various statutes ought to have maintained this distinction.

6. Further, the allegations against the petitioner are too general and vague in nature. The alleged selling of rice and kerosene oil at higher rate, short supply of food grains, particularly in the absence of any allegation of diversion of the essential commodities to the black marketing etc., cannot constitute the basis for suspension.

7. Hence the writ petition is allowed and the order of the first respondent is set aside. Consequently, the suspension of the authorization of the petitioner shall also stand set aside. The petitioner claims to have filed explanation. The second respondent shall pass appropriate final orders duly taking into account the explanation submitted by the petitioner. There shall be no order as to costs.

L.NARASIMHA REDDY, J

Dated : 06th December, 2004

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To

- 1 The Joint Collector, Anantapur, Anantapur District.
- 2 The Revenue Divisional Officer, Anantapur, Anantapur District.
- 3 The Mandal Revenue Officer, Gooty Anantapur District.
- 4 2 CCs to the G.P. for Civil Supplies, High Court of A.P., Hyderabad, (OUT).
- 5 2 CD copies.